

**Citation:** *R. v. Corporal J.W. Campbell*, 2007 CM 1025

**Docket:**200764

**STANDING COURT MARTIAL  
CANADA  
ESQUIMALT, BRITISH COLUMBIA  
11 FIELD AMBULANCE**

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**Date:**20 November 2007

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**PRESIDING:**COLONEL M. DUTIL, C.M.J.

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**HER MAJESTY THE QUEEN  
v.  
CORPORAL J.W. CAMPBELL  
(Accused)**

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**SENTENCE  
(Rendered orally)**

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[1] Corporal Campbell, having accepted and recorded a plea of guilty in respect of the first and second charge, the court finds you guilty of these charges. This is a case where the prosecution and counsel for the defence have made a joint submission on sentence. They have recommended that this court sentence you to a severe reprimand and a fine in the amount of \$2000. They also recommend that the court should allow you to pay the fine in unequal terms based on the following:

From January 1, 2008 to 1 April 2008, \$50 per month;

from 1 May to 1 August 2008, \$100 per month; and

from 1 September 2008 to 1 March 2009, \$200 per month.

[2] Although the court is not bound by the joint recommendation, it is generally accepted that a joint submission should be departed from only where to accept it would be contrary to public interest and would bring the administration of justice into disrepute. This is not the case here. It has long been recognized that the purpose of a separate system of military justice or tribunal is to allow the armed forces to deal with matters that pertain directly to discipline, efficiency and morale of the military. It is also

recognized that the military context may, in appropriate circumstances, justify and at times dictates a sentence that is more severe than if the offence was committed in a purely civilian context in order to promote proper military objectives. That being said, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[3] In determining sentence today, the court has considered the totality of the circumstances surrounding the commission of the offences presented during the sentencing procedure, as well as the documentary evidence filed with the court and the testimony of Corporal Campbell. The court considered also for the purposes of sentencing representations made by counsel. The court has also considered any direct and indirect consequence that the finding and sentence will have on you.

[4] When a court must sentence an offender for offences that he has committed, certain objectives must be pursued in light of the applicable sentencing principles. It is recognized that these principles and objectives will slightly vary from case to case, but they must always be adapted to the circumstances and to the offender. In order to contribute to military discipline, the sentencing principles and objectives could be listed as:

Firstly, the protection of the public, and this includes the Canadian Forces.

Secondly, the punishment and the denunciation of the unlawful conduct.

Thirdly, the deterrence of the offender and other persons from committing similar offences.

Fourthly, the separation of offenders from society, including from members of the Canadian Forces, where necessary.

Fifthly, the rehabilitation of offenders.

Sixthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender.

Seventhly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

Eighthly, an offender should not be deprived of liberty if less restrictive punishment or combination of punishments may be appropriate in the circumstances.

And, finally, the court should consider any relevant aggravating or mitigating circumstances relating to the offence or to the offender.

So the joint submission on sentence must be examined having in mind those principles and objectives.

[5] The court agrees with the prosecution that the sentence in this case should emphasize the need to protect the public by the denunciation of the conduct as well as general deterrence.

[6] This is a case that deals with the violation of the Internet policies within the Canadian Forces, however, the violation relates to the unauthorized use of a computer and the improper disclosure of user identification and password to colleagues and friends in order to access computers that belonged to the computer club in Camp Ziouani. Service personnel use these computers to contact their families and friends as well as to conduct other personal activities such as banking and chats. This is not a case where the computers were the instrument to commit illegal acts under the *Criminal Code* of Canada. At least, that is not the information that was provided to the court. These computers were not part of the DND network.

[7] In arriving at what the court considers to be a fair and appropriate sentence, the court has considered the following factors to aggravate the sentence:

One, the objective gravity of this offence. A person found guilty of conduct to the prejudice to good order and discipline under section 129 of the *National Defence Act* is liable to dismissal with disgrace from Her Majesty's service. It is a serious offence.

Two, the particular context of this case as revealed by the statement of circumstances. Although you may have felt that you wanted to help your friends in giving your password and user identification, you knew that you were violating the very agreement you had signed for the use of the particular computer. You also knew that accessing pornographic sites was not an authorized use of the same computers. You and others may not fully realize the seriousness of computer security violations, but the spreading of similar conduct, which in itself may appear not to be of the most serious nature, may well lead the Canadian Forces authorities to discontinue this important service to service personnel and their families if the users do not respect their basic agreements when using these computers and that would have a very, very significant effect on the morale of the military, especially for those being deployed on operations.

The third aggravating factor is your conduct sheet. Although these offences are not similar in nature, they show that you have some difficulty with basic military discipline. The court also notes that all your discipline incidents have taken place during military operations outside Canada.

[8] The court considers the following factors to mitigate the sentence:

The fact that, first, you have acknowledged full responsibility for your actions by pleading guilty before this court, and that, at the very first opportunity. Based on the statement of circumstances as well as your testimony, I accept the comment made by your counsel that this offence was committed showing a profound lack of judgement.

Two, the fact that your Class "B" service contract was terminated prematurely apparently further to the addition of the third charge which was ultimately withdrawn at the request of the prosecution after the commencement of the proceedings before the court this morning.

And, third, the fact that you gave your password and user identification code to help your friends to contact their families when they could not do it with their own user ID and password because of computer reliability problems.

[9] For all these reasons, the court accepts the joint submission made by counsel which is adequate in the circumstances to achieve the need for discipline and serve the protection of the public and would not bring the administration of justice into disrepute. In addition, I am confident that you will not be involved in similar conduct in the future. In the meantime, not only you will have an additional entry on your conduct sheet, but you will require a pardon under the *Criminal Records Act*. Therefore, the court sentences you to a severe reprimand and a fine in the amount of \$2000 to be paid in the following terms:

From 1 January 2008 to 1 April 2008, \$50 per month;

from 1 May to 1 August 2008, \$100 per month; and

finally, from 1 September 2008 to 1 March 2009, \$200 per month.

COLONEL M. DUTIL, C.M.J.

Counsel :

Major S.A. MacLeod, Directorate of Military Prosecutions

Counsel for Her Majesty The Queen

Lieutenant(N) S.C. Leonard, Directorate of Defence Counsel Services

Counsel for Corporal J.W. Campbell